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NOTES OF THE WEEK

Adoption: Withdrawal of Consent

When a parent, having allowed his or her child to be in the care of others for a considerable time, and having given consent to adoption, decides at the last moment to withdraw consent, the would-be adopters must suffer considerable distress and are entitled to sympathy. However, the law is that consent may be withdrawn at any time before the making of an order, *Re Hollyman* (1945) 109 J.P. 95; [1945] 1 All E.R. 290.

In such circumstances a question might be raised by the applicant on the ground that consent was being unreasonably withheld, Adoption Act, 1958, s. 5 (1). From a number of decisions of the superior courts, *e.g.*, *Re K. (an Infant) Rogers* v. *Kuzmicz* [1952] 2 All E.R. 877, it is clear that a court should not too readily come to the conclusion that consent is unreasonably withheld and may sometimes have to refuse to make an adoption order although to make an order would appear to be for the welfare of the infant.

The Times of September 17 contained a report of a decision of the Judge of Appeal in the Isle of Man in which this question arose. The mother of the infant, who was a year old, had placed him in the care of a couple who belonged to the Church of England although she was a Roman Catholic. The mother consented to adoption and said she did not wish to impose any conditions about the religious upbringing. When proceedings for adoption were started she wrote that she consented, but a few days later she wrote that she was withdrawing her consent. A letter to the same effect was received from a priest. It appeared that she had been told that if she did not withdraw her consent she would be committing a sin and might be in danger of expulsion from the Church, and she withdrew her consent because of this threat of expulsion. The application for an adoption order having been refused the applicants appealed.

The Judge of Appeal, after reviewing the facts, said he had come to the conclusion that the withholding of consent by the mother was not unreasonable in law, and though he had great sympathy with the appellants he must dismiss the appeal.

Assault on a Child

A woman who, after having already warned a five year old boy about getting on her garden wall and swinging on her gate, caught him again on the wall and gave him a slap, was summoned before West Hartlepool justices for assault and found Guilty. The story is told in the *Newcastle Journal* of September 1.

Her solicitor submitted that what his client had done was reasonable and justified in law, but the chairman said the defendant had taken the law into her own hands. The bench made an order of absolute discharge.

There was much to be said in excuse of a moderate slap, even though it was not lawful chastisement in the circumstances. Many an exasperated adult has been tempted to award a little corporal punishment on a child too young to be answerable in any court for damage or other misconduct, especially if the parent declines to do anything about it. None the less, there is always the danger that if this were allowed there would be those who would lose their tempers completely and resort to excessive violence which they would afterwards regret. So on the whole it is better that the law should not recognize the right of strangers to administer punishment to children in such circumstances. The decision of the West Hartlepool magistrates was, if we may say so, eminently reasonable, in that it stated the law and gave full weight to mitigating circumstances.

A parent, or a person in *loco parentis*, such as a schoolmaster, has the right to administer chastisement, always provided it is moderate and reasonable. The right does not extend to neighbours, however sorely tried they may be.

Witnesses out of Court

The general rule that witnesses should remain out of court until they are called, and should remain in court until the end of the case or until permitted by the court to leave, is sensible in that it prevents witnesses who are

about to give evidence from hearing what other witnesses have said and what questions have been asked in cross-examination. Dishonest witnesses might alter their story so as to agree with what has been said and be put on their guard as to inconvenient questions. Even honest witnesses might be affected unconsciously.

When the hearing is adjourned, whether for a luncheon interval or to a future date, it is impossible to prevent witnesses from meeting one another, and it is not suprising if they are inclined to discuss the evidence unless they are warned not to do so. Witnesses accustomed to giving evidence frequently should not need such warning.

The *Manchester Guardian* recently reported a case in which it was alleged that witnesses had been overheard discussing the evidence. This was an appeal against conviction for fraudulent travelling on a railway. After the luncheon interval a man who had been in the public gallery and who said he had no connexion with the parties deposed to having overheard a conversation during the adjournment between two railway inspectors, one of whom had already given evidence and one who had not, about the evidence. Counsel for the appellant submitted that in the circumstances the Court could not place too much reliance on the evidence of the two inspectors, and the appeal was allowed.

Assault on Constable

The Guardian of September 2 reported a case in which a man who asserted that he went to the aid of a woman because he thought two men were "getting fresh" with her, was fined for assaulting and obstructing a constable in the execution of his duty. The two men were in fact police officers who had arrested a woman on a charge under the Street Offences Act who was struggling with them.

The defendant denied that before he struck the policeman the latter had told him he was a police officer or that he had been shown the officer's warrant card.

Even if the magistrates had accepted the defendant's evidence on that point, that would not have disposed of the charge. It was decided in *R.* v. *Forbes* (1865) 10 Cot. C.C. 362, that in a prosecution for an assault on a constable in the execution of his duty, proof of knowledge on the part of the accused that the constable was so acting is unnecessary, and this decision was approved by the Court of Criminal Appeal in *R.* v. *Maxwell and Clanchy* (1909) 73 J.P. 176.

Saving the Costs

In the *Liverpool Daily Post* of September 12 is a report of a case in which a defendant appeared to answer a charge of driving without due care and attention. He pleaded guilty and was fined £10 and ordered to pay £5 10*s*. costs. The chairman of the bench told the defendant that if he had informed the police or the court that he intended to plead guilty he would have saved the £5 10*s*. costs.

We wonder whether defendants always realize that the attendance of witnesses may well mean that the cost so incurred will be added to any fine which is imposed on them. The notice in form I in the schedule to the Magistrates' Courts Rules, 1957, advises defendants who wish to plead guilty to write to the clerk of the court at least three days before the date of hearing "in order to avoid the unnecessary attendance of witnesses." No mention is made of avoiding liability for the payment of the costs and, indeed, it is very doubtful whether there should be any mention of the matter. It is most important that defendants who genuinely feel that they are not guilty of the offence for which they are summoned should not be induced by anything which emanates from the court or the prosecutor to plead guilty in order to save expense or trouble. If, having considered the matter as he sees it, a defendant thinks that although he feels that he is not guilty he is not prepared to take the trouble to contest what may be a quite minor matter that is his affair; but for the defendant to receive a notice which offers him any financial inducement to plead guilty would be wrong. On the other hand it cannot be denied that to most defendants who have to consider the matter the question of what it is likely to cost them to contest the case is a very relevant matter, and it is certainly unfortunate that a defendant who clearly wishes to plead guilty should incur unnecessary expense because he does not know how to proceed to avoid doing so.

A "Home-made" Speed Trap

The Guardian of September 14 reports the intention of the Oxfordshire police to make use of a new device, made by a police constable in their traffic department, to record the speed of motor vehicles. It is said that it has taken the constable about five months to prepare this device and that it has cost less than £50. Two lengths of rubber tubing are spread across the road 220 *yds*. apart and when the front wheels of a vehicle pass over the first length of tubing a stop-watch is started and when the front wheels pass over the second length of tubing the watch is stopped. This gives, of course, the time taken by the vehicle to travel 220 *yds*.

The last sentence of the report in *The Guardian* reads "the device ensures that only the same vehicle starts and stops the watch." We should be interested to learn more on this point because on the face of it it would appear that if one vehicle started the watch and was then overtaken in the "control" by another vehicle the overtaking vehicle, on hitting the second length of tubing, would stop the watch. We have little doubt that we shall hear more about this device in due course.

Parking Congestion

As one drives through the West End of London it is easy to believe that a little more traffic added to that at present trying to travel through that area could well bring everything to a standstill. It is really quite intolerable to find in a busy west end street, which will just accommodate four lines of traffic, that one continuous line of cars is parked on one side, a second such line on the other and a third, not quite continuous but nearly so, occupies half the remaining space. The result is that one line of vehicles (if none of them is too wide) can just thread its way through the quarter of the roadway which is left and if any one of those vehicles has to stop to pick up or to set down a passenger, or for any other reason, the whole line has to stop.

In the past we have said that "garaging" in the street should never have been permitted, and we think that our streets would never have had to try to accommodate the volume of traffic now seeking to use them if would-be vehicle owners had had to find somewhere off the streets to keep their cars before they purchased them. As it is cars which, when not in use, litter the streets outside their owners' (or other people's) houses add all the time, when in use, to the number parked in busy congested areas. It is too late now to put the clock back and probably the only way to prevent a complete traffic block is for the police to increase considerably their activity against those

who will bring their cars into areas where they cannot avoid causing obstruction when they are parked and for the courts to make this parking so expensive that the owners of the cars will find it not worth their while to use their cars in this way. This may cause some sort of outcry, but it will be better than allowing London's traffic in the central areas to come to a standstill.

Parking without Lights

Whatever the authorities may say to emphasize the fact that the regulations which allow vehicles to be parked without lights do not authorize them to be parked anywhere where they are causing obstruction, there can be no doubt that parking without lights facilitates parking and so adds to the traffic problem. It seems, however, to be established policy to perpetuate the present provisions because new regulations are in draft and have been circulated by the Minister of Transport and Civil Aviation to interested persons for observations. They are entitled "The Road Vehicles Lighting (Standing Vehicles) (Exemption) Regulations" and their purpose is to consolidate with amendments the existing London Regulations of 1955 and the General Regulations of 1956.

The explanatory note summarizes the proposed changes by saying that in relation to roads outside the Metropolitan Police District and the city of London it is proposed that chief officers of police may authorize "unlighted" parking on one particular side of a specified road or until a particular time. Also for these same roads it is no longer to be a condition that an unlighted vehicle must be parked within 25 *yds.* of a lit street lamp. Also, new provision is made about the type and the erection of traffic signs to show where parking without lights is permitted.

So far as London (*i.e.*, the Metropolitan District and the city of London) is concerned the proposal is that the existing provisions should be continued without modification. It is always confusing in a matter of this sort to have different regulations for different places but presumably there is some good reason for it in this instance.

Another modification, affecting only places outside "London" is that a chief officer of police who authorizes parking in a parking place or a hackney carriage stand without lights may attach a condition fixing a time-limit beyond which such parking is not permitted.

A modification affecting parking with "parking lights" applies throughout the country, *i.e.*, there is no longer any need for vehicles so lit to be parked within 100 *yds.* of a street lamp.

If we think it necessary we will deal further with these matters when the new regulations are made.

Priority in Cleanliness

In a public speech earlier this year, the Minister of Housing and Local Government returned to what he called the battle for clean air. Pointing out that by 1963, when the period of grace under the Clean Air Act, 1956, for modifying boilers and plant expires, there should be little dark smoke from factory chimneys, he reminded his audience that fully half the smoke in the air comes from household chimneys. Up to date the Minister said he had confirmed 115 smoke control orders submitted by local councils, and he knew of nearly 200 others already started. Altogether these would cover 50,000 acres of smoky towns. So far, so good. But the black areas, where the worst air pollution is to be found, extend over two million acres. One feature of the intensified campaign against dark smoke which makes us rather uneasy is its possible indirect effect on other functions of local authorities. A few days after the Minister's speech, a correspondent in the midlands reported that slum clearance in one of the large Black Country boroughs was to be pursued more slowly, in order to release staff for work on smoke abatement. In this town not only are there many factories, some of them old fashioned, but the amount of smoke from domestic fires is increased by long standing habits of the ordinary household, based upon the miner's tradition of "allowance coal." In slum areas especially, the proportion of old fashioned household grates will be higher than in the same number of new houses, so that slum clearance would incidentally tend to reduce dark smoke. To that extent the policy of going more slowly in slum clearance may tend to defeat the object sought. The town still has, according to the published statement, more than 2,500 dwellings believed to be unfit for habitation, though that number have already been cleared in the first five year programme. The town council had hoped to get rid of those remaining in the course of the next five years, at the rate of 500 yearly, but they have now decided upon a yearly figure of 300, so as to set staff free for work under the Clean Air Act, 1956. The result will be to keep some of the unfortunate occupants in unfit dwellings for eight years or so. Things may not turn out so badly as this: it may be possible to renew the effort to clear slums, and perhaps to aim higher than the original figure of 500, so as to overtake arrears, but we do not like the temporary setback.

A local daily newspaper, speaking of an adjacent county borough, reports the council's housing manager as saying that a 20 year old couple, who got married in 1959 and put their name upon the council's housing list, might expect to get a house when they were 190 years old. The borough housing list contained more than 8,500 names. The manager was further reported as saying that he thought the council had done "exceedingly well." This was not meant as a cynical joke at the expense of newly married couples, or other persons needing houses; he went on to say that the council more than held its own with neighbouring authorities, but that the normal progress of the council's housing scheme had been upset by speedier slum clearance. He did not mention immigration, but it has been stated in other local newspapers that the problem of housing has been complicated by what some councils regarded as a moral obligation to find accommodation for immigrants living in overcrowded houses. We yield to no one in the wish to see a quick improvement in the condition of the atmosphere, but it is most unfortunate that this has apparently to be secured at the expense of delay for slum clearance and new housing.

Admittedly the business of prescribing smokeless zones under the Clean Air Act, 1956, involves a heavy call upon a local authority's officials. A Westminster correspondent tells us, for example, of visits from house to house and office to office by a member of the city council's staff who was making a list for all occupied premises of the means of heating now employed. Even if this is not essential, it is certainly a prudent course, since it tells the city council what is the extent of the problem in each area proposed to be described as a smokeless zone. It is however a course of action which must draw heavily upon the council's staff, and we throw out the suggestion that the canvas could be carried out by part time workers. Would it be practicable, for example, to offer employment to former members of the council's staff

who might be glad to supplement their pensions, thus leaving the present staff to undertake the more skilled work of checking smoke emission which is an offence already, that is to say even without the prescribing of a smokeless zone? One of our Westminster correspondents tells us that what he as a layman would describe as dark smoke is regularly emitted from the chimneys of some commercial buildings within sight of the city hall.

"JUSTICE SHALL NOT ONLY BE DONE, BUT . . ."

[CONTRIBUTED]

While there is little denying that justice is invariably done in the great majority of cases that come before our courts, the High Court has often been at pains to indicate that justice must not only be done but it must also manifestly appear to be done, and because this principle was said to have been violated certain convictions were set aside in *R.* v. *Bucks JJ.* (1922) 86 J.P.N. 636.

Some showmen had moved their vehicles into a village one afternoon ready for the fair on the following day. The police requested them to move and as they refused to do so, prosecution followed. When the matter came before the justices they interviewed privately the local superintendent of police in order to ascertain whether on future occasions consent would be given to the showmen moving in at some fixed hour in the evening, instead of the afternoon, of the day prior to the fair. No such consent was given and the interview terminated; the merits of the case not being discussed with the superintendent. Nevertheless, said Darling J., in quashing the convictions, "It has never been more important than in these days that there should be an obvious gulf between the judiciary and the executive. Above all, the justices should have kept absolutely clear of any suspicion that there was any sort of collusion between them and the police."

Previous convictions have caused no little concern in this respect, and *Hastings and Others* v. *Ostle* (1930) 94 J.P. 209; 143 L.T. 709, was a case of this kind. The justices after retiring to consider their decision in the first of a series of cases under the Salmon and Freshwater Fisheries Act, 1923, sent their clerk to obtain information from the police as to the three appellants' previous convictions for fishery offences so that the appropriate sentence might be considered. Two of the appellants had two, and the other, one, such conviction, and of these the justices were duly informed. The justices then returned into court and announced a conviction and penalty in each case. "In these circumstances," said Lord Hewart, C.J., "it is quite clear that the justices took a course which they ought not to have taken. The proper course to pursue was to have returned into court when they had decided to convict, and then publicly and openly, in the presence of the appellants, made inquiries into the appellants' previous convictions, in which case the appellants and each of them would have had the opportunity of dealing publicly with the matter."

Perhaps *R.* v. *East Kerrier Justices, ex parte Mundy* (1952) 116 J.P. 339; [1952] 2 All E.R. 144, is better remembered for its condemnation of the former practice of some clerks retiring as a matter of course with the justices, but it is also a reminder to those concerned with the administration of justice that there is a potential danger if previous convictions are surreptitiously noted. In this case the justices retired after hearing the evidence and the clerk went with them. In due course the latter re-appeared and when he returned to the justices' room he took with him a piece of paper he had received from a police officer to whom the clerk had been seen to speak. The court re-assembled, and without saying more, the justices announced that they had convicted the applicant and called for evidence of previous convictions, if any. The police officer proved a previous conviction and the applicant was fined £5; his driving licence being suspended for three months. "Nothing was said in court as to what the justices had sent for," said Lord Goddard, C.J., "for all the applicant knew any statement might have appeared on that piece of paper even (though, of course, it was not) a statement by a police officer of something he had forgotten to say in evidence. It is possible that, if they had announced in court at the time that the only piece of information which had been conveyed to them was the fact of that previous conviction and that they had made up their minds before then to convict, we might have dealt with the case as the Court did in *Davies* v. *Griffiths* (1937) 101 J.P. 247; [1939] 2 All E.R. 671."

The *Davies* case appears distinguishable in this way: The justices before announcing their decision asked for proof of previous convictions. After receiving them they retired, and on coming back into court they pronounced conviction and penalty. The report then goes on to say that the solicitor appearing for the applicant objected that the course the justices had adopted in not announcing in court their decision to convict before hearing the previous convictions was irregular, whereupon the justices assured him that they had come to a decision to convict before they had been acquainted of the previous convictions. In other words, as Devlin, J., put it when commenting on this case in *R.* v. *East Kerrier Justices, ex parte Mundy, supra*, ". . . the error was publicly corrected, and no person who sat in court, unless he was going to suggest that the justices acted in bad faith (and that is not suggested) could have left after the hearing under the impression that some injustice had been done. If he believed the statement made in open court, then no injustice had been done . . . The vital distinction here (referring to the *East Kerrier Justices* case) is that the error was not put right. The matter was not raised in court."

From this it would appear that the convictions in the *Hastings and Others* case were set aside not so much because of the information taken into the justices' room but because the justices did not deal with the matter of the previous convictions in open court, and this also appears from *Hill* v. *Tothill* (1936) W.N. 126; Digest. Supp., where justices privately informed themselves of a previous conviction and on returning into court convicted and pronounced sentence without requiring the previous conviction to be proved.

The same principle in a different setting reappears in *R.* v. *Justices of Bodmin, ex parte McEwen* (1947) 111 J.P. 47, where the accused, a soldier, was alleged to have stabbed and seriously injured another soldier during a barrack room quarrel. He was charged with wounding with intent to do grievous bodily harm, but at a later stage this was reduced to unlawful wounding; the case being dealt with summarily. The accused pleaded guilty and was sentenced to six months'

imprisonment. During the hearing an officer of the accused's unit was called as a witness as to character, and after stating that the accused was a good worker when not under the influence of drink and had given no trouble since the stabbing affair, added, "I could say a lot more but I think I had better not." Whether it was that the justices were curious to know what had been left unsaid is not reported, but the fact remains that after retiring they sent for the officer and in their private room interviewed him without either the accused or his legal adviser being present. "It may be that they sent for the officer in the interests of the accused," said Lord Goddard, C.J., "it may be that the information which the officer gave was in the interests of the accused. That does not matter. Time and time again this court has said that justice must not only be done but must manifestly be seen to be done. If justices interview a witness in the absence of the accused justice is not seen to be done, because the accused does not and cannot know what is said."

But where a shorthand-writer entered a similar sanctum the conviction was allowed to stand and there was but a modicum of disapproval of the procedure. The facts in *R. v. Welshpool Justices, ex parte Holley* (1953) 117 J.P. 511; [1953] 2 All E.R. 807, show that a shorthand-writer who had taken down the evidence for the clerk was later required to go into the justices' room in order that they might check or re-consider extracts of the evidence. This, the defence contended, was irregular as it deprived them not only of knowing what part of the evidence was being re-considered but of the opportunity of checking the accuracy of the shorthand-writer's notes against those made by the solicitor for the defence. "With regard to the shorthand-writer," said Lord Goddard, C.J., "she was taking a note of the evidence to which the justices were entitled to refer . . . had the clerk himself taken the note, even if he had remained in court while the justices had retired, we cannot conceive that there would be any objection to their sending for his note to refresh their memory. Nor do we think, in the circumstances, we can say that sending for the shorthand-writer was improper." "But at the same time," His Lordship continued, "it would be better, should this state of affairs arise again, if the justices come into open court and ask the shorthand-writer to read his or her note on any particular point which they might require."

All in all, it would appear that a wrong done privately must, if a conviction is to stand, be put right publicly so that no person who sat in court can, unless he is going to suggest bad faith on the part of the justices, leave after the hearing under the impression that some injustice had or might have been done.

THE HIGHWAYS ACT, 1959

(*Continued from p. 525, ante*)

Upon s. 159, Lord Reading's committee included a full note in their report: at that stage the clause was 158. This note explains some of the difficulties of interpretation which have arisen upon s. 30 of the Public Health Act, 1925, difficulties which have discouraged many local authorities from using powers of the old section. In particular they point out that that section provided that the developer was to be deemed to be laying out a new street, not constructing a new street. Ever since the first model byelaws were issued by the Local Government Board in 1877, the verb "lay out" has had a technical sense and has been related to the width of a street as a whole, and not to its division between carriageway and footway. The provisions in the model series of byelaws, and in local byelaws based upon the model series, regulating the width of the carriageway and the width of footways have been treated as falling under the power for "construction of new streets" in s. 157 of the Public Health Act, 1875, and not under the power for requiring "width." Further, the view taken by the Local Government Board and its successors, as confirming authority for local byelaws, at least since early in the present century, has been that s. 157 of the Act of 1875 did not empower a local authority to make byelaws requiring a person, who laid out a new street, to construct it also. That is to say, the byelaws governing the construction of a new street applied only where the person who laid out the street went further and did in fact construct it. The third part of the note of Lord Reading's committee upon s. 30 of the Act of 1925, which forms part of their explanation of what is now s. 159, seems to be based upon a misapprehension about the power to apply byelaws dealing with construction, where a local authority made a declaration under s. 30 of the Act of 1925. On the other hand the committee do rightly point out that one of the weaknesses of s. 30 of the Act of 1925 was that the person who laid out a street of the required width was not obliged to dedicate that street as a highway. If he did not do so he would be at liberty to resume possession of some part of the land. This is, indeed, a defect of the older law which does not arise only in connexion with s. 30 of the Act of 1925. It was pointed out by the Departmental Committee on Building Byelaws in 1918, which in para. 72 cf Cd. 9213 recommended legislation to prevent a person who had laid out a new street in accordance with byelaws from altering it afterwards, in such a way that if at first so laid out it would have contravened the byelaws: *see Tarrant v. Woking Urban District Council* (1914) 79 J.P. 22. This recommendation has still not been carried out.

Lord Reading's committee, in their note upon what was then cl. 158 of the Bill, point out further that s. 30 of the Act of 1925 even in conjunction with other provisions of that Act would not have ensured that pieces of land laid out as parts of a street in pursuance of a declaration under s. 30 would be in proper alignment. Where different owners were involved the notional new street could zigzag in and out. The plain fact is that s. 30 of the Act of 1925, which was based upon provisions in some local Acts, had never been properly thought out in relation to the modern type of byelaws with respect to new streets, and has always been in consequence more or less unworkable.

The clause in the Bill was accordingly redrafted, and s. 159 of the new Act takes a different shape from the old section. In the cases to which the section applies it enables the local authority to make an order prescribing the middle line of the notional new street, and outer lines indicating its width, which shall be the minimum width required by the local byelaws for a new street intended to be the principal means of access to any building, and of a length equal to the length of the existing highway which is being converted into a new street. In principle, though not in form, this power is based upon a recommendation of the Departmental Committee on Building

Byelaws, in para. 68 of their report of 1918, *supra*, although that paragraph was directed to a different point. A person aggrieved by the local authority's order may appeal to quarter sessions, this being an exception from the practice which (as we have mentioned elsewhere in this article) has been preferred in the new Act as in the Public Health Act, 1936, of giving an appeal to a magistrates' court. Where an order under this section has been made, no person may erect a new building between the outer lines prescribed by the order; the land between those lines is to be added to the existing highway as soon as building work begins upon adjoining land. The owner of the land so added to the existing highway is required by the section to remove any fences or other obstructions, and to bring its level into conformity with that of the existing highway. This is a proviso to ensure that land dedicated as part of the highway in pursuance of this section shall not, merely by reason of its dedication, become a highway maintainable at the public expense, even though the existing highway is so maintainable. The new section has the merit that it plainly applies to width alone, and cannot be stretched to include the division of the notional new street between carriageway and footway. It also applies as a direct enactment and not by way of saying that a person doing one thing is to be deemed to be doing another, a form of legislation which may sometimes be justified in order to avoid discrepancies, but has often been found to lead to confusion when local authorities come to work out the practical operation of the applied provisions.

Part IX of the Act, which deals with the making up of private streets, covers 31 pages of the Act and 41 sections. Its purpose is to bring together (and to rationalize where possible) the two codes dealing with private street works in the general law, together with what it calls "the advance payments code" introduced by the New Streets Act, 1951. The law could have been simplified if the provisions about private street works in the Public Health Act, 1875, could have been got rid of, so as to make one code applicable throughout the country. It has however proved impossible to secure agreement about this, in discussions which have gone on from time to time for 30 years or more, and here again it was no doubt thought that a consolidation Bill was not the place to wipe out the provisions of the Act of 1875 where they have been retained, or the provisions of local Acts which were passed before the Act of 1892 and still remain in force.

The advisers of local authorities and of property owners will have to make themselves familiar with part IX of the Act, but this will be a little easier than it might otherwise have been because of a device adopted by a draftsman, for which we do not remember a parallel in similar legislation. This is to group together in ss. 174 to 188 the provisions derived from the Act of 1892, and in ss. 189 to 191 the provisions derived from the Act of 1875. Each of these groups of sections is referred to in the Act as "the Code of 1892" or "the Code of 1875," while ss. 192 to 199 are similarly referred to as the "advance payments code." The result is that, as soon as it is known which code applies in a particular place, it can be found in the new Act under its appropriate cross-heading, the chief difference made by consolidation being that some overlapping provisions are properly arranged.

It should be specially mentioned upon the code of 1875 that Lord Reading's committee purposely departed from the law as it was left by the decision in *Wakefield Sanitary Authority* v. *Mander* (1880) 44 J.P. 522, which relates to the power to charge frontagers where part of a street is made up and there is a lengthways strip between that part and the frontagers on the other side. As the committee poined out, the decision had not been followed in other cases and did not apply under the Private Street Works Act, 1892. Under that Act it had been held, in *Clacton Local Board* v. *Young* (1895) 59 J.P. 581, that the expense of making up a road with a footway on one side only must be borne by the frontagers on both sides. A useful little amendment is made by s. 189 which follows the general rule of the Public Health Act, 1936, in giving an appeal to the magistrates' court, thus taking requirements under the code of 1875 out of the general provision in s. 7 of the Public Health Acts Amendment Act, 1907, which, as the law has stood since that year, has given an appeal to quarter sessions.

Sections 192 to 199 inclusive headed "The Advance Payments Code" reenact the provisions of the New Streets Act, 1951, bringing them into relation to the two codes dealing with street works. It is now a little easier than it was before to see the relation of the advance payments code to the cost of street works. Section 196 deals with cases where the works contemplated when notice of a new building is given do not proceed. Section 197 provides for the registration as local land charges of notices and determinations under these sections, and s. 199 provides that a mortgage or charge given for the purpose of securing payments under these sections shall not preclude a building society from advancing money on the building itself.

With s. 200 under the heading "General" we are still in part IX, but we begin a group of 13 sections, covering 11 pages of the Act and collecting several miscellaneous provisions of the older law. Section 200 corresponds to s. 35 of the Public Health Act, 1925, which was adoptive; the power is now given to all street works authorities in accordance with principles explained by Lord Reading's committee in para. 11 of their report. In making these adoptive provisions general the new Act follows what was widely done in relation to buildings in the Public Health Act, 1936, and a useless complication is removed from the law. It may be remarked in passing that there is a good illustration here of English legislative method. A power is obtained for a particular district by local Act of Parliament; in theory the parliamentary committees who examine the Bill for the local Act receive evidence, to show that the power is necessary because of local circumstances. It must be admitted that this evidence is often perfunctory, and once a power is given there is a tendency for it to be copied from one local Act to another, the evidence of local need becoming thinner year by year until finally a clause conferring the power is recognized as common form, and granted by the parliamentary committees on request.

Sooner or later the common form provisions in local legislation are collected in a public general Bill promoted either by the Government of the day or by local government interests, and at that stage it has sometimes been found that members of one or other House of Parliament, or of both, take fright at provisions which they notice for the first time, even though those provisions have been quite widely put in force in local Acts. The promoters of the Bill agree in order to assist its passage that such and such a clause shall not be put in force universally, but only where adopted by the local authority. Sometimes provision for adoption is included in the first draft of the Bill in order to prevent objections which might perhaps be raised. A refinement upon the provision for adoption is that the adoption shall only take place with the consent of a government department. Sometimes Parliament has gone further still and, instead of making a section adoptive, has said that it shall not be put in force except by an order of the government department. The Public Health Acts from 1875 to 1925 contained examples of all these methods of applying powers to an area, and complicated some of them still further by restrictions which differed between different

classes of local authorities, and between areas of greater or less population. The result was a welter of confusion, because the restrictions had not in the first place been imposed consistently and had become still more inconsistent with the lapse of time. At long last the present Act and the Public Health Act, 1936, between them have done a great deal to get rid of these artificialities, which in relation to most sections had long lost their meaning, it having been proved that no difficulty, for the persons affected by the sections, resulted from their being put in force.

While s. 200 enables a local authority to vary the widths of carriageway and footway when they take over a highway as maintainable at public expense, and thus departs from the principle that the public accept a highway in the form in which it is dedicated to them, it goes on to provide that no greater charge shall be imposed on frontagers than could have been imposed if the street had been made up with carriageway and footway of the width prescribed by a byelaw or other enactment in force. Similarly s. 201 gives power for widening a street when private street works are carried out, with a similar provision that the liability of frontagers shall not be affected.

Sections 202 and 203 reenact the previous law about adoption of a private street either after execution of street works or when advance payments have been made and a majority of frontagers request adoption. Section 204 deals with urgent repairs in private streets, with provision for an appeal to a magistrates' court against a local authority's requirements, and further provision for compelling adoption of the street. It is perhaps worth while to point out, in relation to ss. 203 and 204, that each of them gives power to a majority in number of the frontagers to move for adoption of the street, but that the alternative to a majority in numbers is different. Under s. 203 action may be taken by the owners of more than half the aggregate length of frontages on both sides of the street. Under s. 204 it is the majority of owners reckoned according to rateable value of premises in the street. It is thus possible for one or two persons, owning premises of high rateable value but small frontage, to compel the street works authority to put the appropriate private street works code into operation, when the cost of doing so will fall upon the frontagers according to their length of frontage and not according to the value of the premises.

It is pointed out by Lord Reading's committee that this part of the section may introduce new law. It was suggested by the Divisional Court, in *R.* v. *Epsom Urban District Council* (1912) 76 J.P. 389, that a local authority might have a discresion whether to accede to a requirement by owners under s. 19 of the Public Health Acts Amendment Act, 1907, which dealt with urgent repairs in private streets and the adoption thereafter of a street as a highway repairable by the inhabitants at large. The new section accordingly is so drafted as to leave the local authority no option, although the committee point out that it will still remain open to the Divisional Court to refuse a *mandamus* ordering the local authority to comply with the request of the owners. It may be doubted whether in any ordinary circumstances which can be foreseen the court would so refuse.

Section 205 provides for compensation to persons who sustain damage by reason of the execution of street works, whether these are carried out by the street works authority itself or by frontagers in accordance with the code of 1875 as reenacted. Section 206 defines the relation of the law of private street works to the new law about land designated in a development plan for the purpose of a proposed street or the widening of an existing street. The section will in practice operate chiefly by way of regulations to be made by the Minister of Housing and Local Government for the purpose, broadly speaking, of protecting owners of adjoining land against greater expense than would fall upon them if a street came into existence otherwise than by virtue of inclusion in a development plan.

Section 207 provides for appeals to the Minister of Housing and Local Government, as under the previous law, with one amendment of form.

Section 207 is new law, and deals with the anomaly revealed in the case of *Bishop Auckland Urban District Council* v. *Alderson* (1913) 76 J.P. 347, where a private street which has reached the stage when it ought to be made up under the appropriate private street works code is divided lengthways between the areas of two local authorities, either by a boundary running down the middle of the street or (a less usual case) by a boundary running along the frontage of the premises abutting on the street.

(*To be continued*)

THE TOWN AND COUNTRY PLANNING ACT, 1959

The Town and Country Planning Act, 1959, came into operation on August 16, together with three new statutory instruments. The latter are subject to annulment by negative resolution of either House of Parliament. In present circumstances this risk need not be considered serious, and in any event local authorities will have to act upon the instruments meantime. The most important is a new General Development Order, S.I. 1959, No. 1286. This prescribes the procedure for obtaining and appealing against the terms of a certificate under s. 5 of the Act, and for obtaining copies of certificates and conditions specified under the section. It also designates the classes of development which involve advertising an application for planning permission in accordance with s. 36, and in accordance with s. 37 it prescribes the form of certificate to accompany applications for permission and appeals against decisions on such applications, together with the forms of notice to be used under s. 37.

One of our contemporaries suggested with macabre humour that a copy of the Act should be put into the beach bag of every local government official taking his holiday in August. Even this, however, would not have met the immediate needs created by the Act, because s. 37 above mentioned began to affect every application for development permission made on or after August 16. That section was said in the memorandum on the Bill issued by the Minister last year, Cmnd. 562, to have been inserted in the Act in pursuance of a recommendation of the Franks Committee, who express the opinion in para. 384 of their report, Cmnd. 218, that persons interested in property might be adversely affected by the grant of development permission to other persons.

Ever since the enactment of s. 10 of the Town and Country Planning Act, 1932, which created the system of permission for interim development, there have been suggestions from time to time that a *locus standi* ought to be given to persons

who might be adversely affected by development. One of the latest complaints in this sense related to permission for building at Ditchling, which (it was said) would be detrimental to a privately created bird sanctuary, on neighbouring land.

A more usual illustration occurs when a landowner applies for permission to use land for some purpose disliked by his neighbours, and they think that planned control is not much use, when they find that they are not entitled to be heard against the application and may not even know of it. Under the Act of 1932, when an application was rejected by the local authority the applicant had a right of appeal to the Minister of Health, but the neighbour who felt himself aggrieved when an application was granted had no corresponding right. When the Town and Country Planning Act, 1943, followed by the Act of 1947, changed the whole conception of permission for development, the issue still remained one between the would be developer and the planning authority. The Act of 1959, following the recommendation in para. 384 of the report of the Franks Committee, does not give any rights to neighbours who think that development will adversely affect them, but it does ensure in s. 37 that a person who has a limited interest in a piece of land shall not be able to develop in a way that affects its future, without giving the other persons interested in the land a right to be heard by the planning authority and a right to appeal to the Minister of Housing and Local Government if development permission is granted. It also ensures that a person who has no present interest in a piece of land shall not be able to obtain planning permission for it, without an opportunity for the owner to be heard. It secures these results by requiring the would be developer in each case to supply the planning authority with certificates, the general effect of which is that he has given notice to every other person interested in the land, or that he is the freeholder and that there are no other interests which have to be considered. The persons who have had these notices from him are entitled to make representations to the planning authority.

We mentioned above that the General Development Order now made prescribes the form of certificate not merely for purposes of s. 37 but also for purposes of s. 5. This is the section which establishes the new test of market value in the cases to which we referred in an article at p. 22, *ante*.

They are important for the purpose of claims to compensation under other statutes as well as under the law relating to Town and Country Planning, but it is s. 37 and the certificates thereunder which call for more urgent attention and have therefore been separated from the other very complicated provisions of the new Act to be mentioned in this article. While ss. 36 and 37 with the statutory instruments needed to give full effect to their provisions amount to a detailed code of procedure, the Franks Committee dealt with the problem which is said to have given rise to these provisions in a short paragraph, and on the face of it almost incidentally. Moreover the committee did not speak at all of most of the cases dealt with in the new provisions. It called attention to a possibility which existed under the previous law, that a person who had no interest in a piece of land could apply for permission to develop it under the Town and Country Planning Act, 1947, but we have searched the voluminous written and oral evidence published by the committee, without finding the origin of their recommendation. The point is not even mentioned in the index to that evidence.

We do not know how often it occurred in practice, that a man applied for permission to develop someone else's land. He could have no object in so applying, unless he thought of making an offer for the land. If he failed to purchase, or to acquire an interest entitling him to carry out his project, it is hard to see what harm would be done beyond wasting the time of the planning authority and its officials. The mere fact that a man has obtained permission to develop another person's land gives him no rights at all against that person, unless he has already obtained an option on the land. It may be convenient that planning permission should be obtained before the ownership is transferred, and indeed contracts are common for sale of land or the grant of a building lease subject to the obtaining of planning permission.

This must, however be a matter for arrangement between a willing vendor or lessor and a would be purchaser or lessee; we confess to finding it hard to appreciate the nature and extent of the evil at which the Franks Committee's recommendation in para. 384 was aimed. The elaborate enactments in ss. 36 and 37 of the Act of 1959 seem to indicate that when the Minister's advisers were considering the recommendation other points occurred to them. The sections as enacted are aimed not merely at the *prima facie* improbable case (as we regard it) mentioned by the Franks Committee; but at a variety of cases in which a person has a partial interest in a piece of land, and if planning permission was obtained could develop it in such a way as to damage other interests. If the draftsman of the Bill had set out to deal only with the point mentioned by the Franks Committee it would have been simple to say that an application for planning permission should not be entertained unless the applicant already held, or had contracted to obtain by purchase or lease, an interest in the land sufficient to entitle him apart from planning law to carry out the development proposed. Where a man had such an interest, it is conceivable that he might use it in such a way as to damage other interests, unless these had been properly safeguarded by covenants, and it may be for this reason that ss. 36 and 37 were inserted in the Act, but it is to be noted that they do not meet the complaint above mentioned, that a man may develop his land with planning permission in a way which is considered detrimental by his neighbours, who are left to their remedies under other branches of the law. Even within the field now covered by ss. 36 and 37, it is not easy to see how there was any serious evil to be met. A person who had an interest less than freehold in a piece of land would usually be subject to restrictions of a contractual nature, imposed by the freeholder for the purpose of protecting the freehold and subordinate interests, and would not be in a position to carry out development detrimental to those interests.

It is true that that Franks Committee speak particularly of the position of agricultural tenants, whose protection under s. 24 of the Agricultural Act, 1947 is removed where the landlord serves notice to quit for the purpose of a use of the land (other than an agricultural use) for which planning permission has been granted. But here again it does not seem clear what the committee had in mind, since a notice to quit can only be served by a landlord, and permission to develop, obtained by a person who is not the landlord, does not affect the tenant—unless and until that person buys out the existing landlord.

If what the committee had in mind was that by the time the outsider who has obtained planning permission becomes landlord it is too late for the agricultural tenant to protect himself, we can see the point, but this, again would have been met by a short provision grafted on the enactment

above indicated, to the effect that an application for planning permission should not be entertained unless the applicant had a sufficient interest in the land, or an option over it. The added provision could equally simply have provided that if the land comprised an agricultural holding the tenant should be entitled to be heard by the planning authority, without the superstructure erected by ss. 36 and 37 upon these straightforward ideas.

However, what is done, is done, and local government officials concerned with planning will be obliged, as will estate agents and solicitors in private practice, to master the new code.

FURTHER FORM STUDYING

[CONTRIBUTED]

It is comforting to learn that an expert in the field of personnel selection, Mr. John Tyzack of Management Selection, Ltd., considers that the properly conducted interview provides the soundest measure of a candidates capability for a particular post: (Notes of the Week; *ante*, p. 325). Other methods of selection do not offer very attractive alternatives and are unlikely to be adopted for local government purposes. One such alternative is the "motivational" and "psychological" group test, the current American vogue. The object of these tests is to discover whether a person is so made up as to "fit" into the available position. They tend to concentrate on the individual's hypothetical capacity rather than his actual ability. As is brilliantly demonstrated by Mr. William H. Whyte in his book, "The Organization Man," group testing may be useful when confined to tests of particular aptitudes, but even then only to a limited extent. The usual aptitude tests consist of such exercises as fitting together jig-saw like patterns in a given period of time. These tests are intended to prove the subject's capabilities in a particular field. In fact, as Mr. Whyte demonstrates, all that they actually prove is the subject's dexterity at fitting together a few wiggly bits of wood.

As distinguished from these physical aptitude tests, the purely psychological group test is a potentially dangerous method of selection. As already stated, these tests are designed to show whether a man is capable of fitting into the vacant position. As at present administered in the U.S.A. they are devised and carried out by profit-making agencies which employ psychologists for the purpose. On the answers to such questions as: "Do you prefer to stay at home with a book or to go out with the gang?" and, "Whom did you love most, your father or your mother?" may depend the whole course of a man's career. Fortunately, Mr. Whyte includes in his book an Appendix entitled, "How to cheat on Personality Tests."

There is little doubt, as Mr. Tyzack suggests, that the well-handled interview by the experienced interviewer is the best of all ways of assessing a person's quality. From the local government point of view, however, many difficulties will need to be overcome if this ideal is to be attained in the selection of candidates for local authority appointments. With some exceptions, most appointments are now made by a mixed panel, consisting of committee members and officials. Between them they may possess a great fund of administrative experience, both in local government and in business generally. But few business men or local government officers spend much of their time interviewing prospective employees or making appointments. Consequently their experience in selection, as distinct from general administration, is limited. This, combined with the brief acquaintance with the candidates allowed by the "ten-minute-in-and-out" method of interviewing makes selection rather a hit-and-miss affair.

In this situation the application form has an important function to fulfill. It supplies the background and brings into the interview room the type of person required to fill the vacancy. But that is all; as far as it can possibly do so the application form has served its purpose. It is then for the interviewer to make the final choice, that is, to decide which of the candidates has used his background in such a way as to make him the most suitable person. The present basis of interviewing makes this task difficult.

Though the problem is simple to define, the remedy is by no means easily found. The first step seems to be to standardize the composition of selection panels. A permanent selection committe of two or three council members would be the best solution, being joined for each selection by the chief officer and deputy of the department concerned. Thus, even allowing for changes in the constitution of the council, a fund of experience in selection could be built up and, perhaps, passed on.

Some authorities use the method of an informal talk, before the actual interviews, between the selection panel and all the candidates together, usually over coffee. This system has obvious features to recommend it, provided that the panel bear in mind that the brilliant conversationalist is not always the best administrator.

Any further standardization of interview techniques may be undesirable. One consequence would probably be the appearance of literature similar to Mr. Whyte's Appendix on "How to Cheat on Personality Tests." Candidates would know what to expect and would prepare themselves accordingly. The surprise question or situation is always the best test of a candidate. Fortunately, unlike the large commercial organizations, local authorities, by reason of their size and composition, are unlikely to build up corps of full-time psychological probers to submit reports on a candidate's "mental adjustment ratios" or "introversion complex potential," before he may be considered for appointment. Such activities are of little value, and are invariably self-propagating. The interview, or better still a series of interviews, properly handled by experienced questioners is the only possible, and indeed the only desirable, method of selection for local government officers. G.J.R.

ADDITIONS TO COMMISSIONS

ANGLESEY COUNTY

John Hywel Thomas, Tabor Hall, Gorad, Valley.
Mrs. Edith Eluned Williams, Penrhyn, Llanfwrog.

BEDFORD COUNTY

Lt.-Col. Hanmer Cecil Hanbury, M.V.O., M.C., Turvey House, Turvey, Bedford.
Bryn Leach, D.F.M., 38 Dents Road, Bedford.

CORNWALL COUNTY

Major Simon Edward Bolitho, M.C., Chycelin, Alverton, Penzance.
John Rawson Croggon, The Hollies, Grampound.
Mrs. Monica Mary Morton Nicholls, 30 St. Stephens Road, Saltash.

ANNUAL REPORTS, ETC.

THE CIVIC PURSE OF KINGSTON-UPON-HULL

The city treasurer of Hull, Mr. C. H. Pollard, C.B.E., F.S.A.A., F.I.M.T.A., issues one of the most condensed summaries of city finances to be found in the United Kingdom. It is no worse for that and a surprising amount of information is included in a document equal in size to a folded sheet of foolscap.

The city rate of 22*s.* 6*d.* for 1959–60 is estimated to produce £3,800,000 which is 41 *per cent.* of total expenditure on public services, the balance being met by Government grants (55 *per cent.*) and a relatively small amount of other income. Not so often met with nowadays is a rate charge for housing: the levy in Hull is 1*s.* 9*d.*

There are about 92,000 dwelling-houses in the authority's area: 70 *per cent.* of them have a rateable value of £17 or less. A man living in a house of £17 rateable value has to pay 7*s.* 4*d.* a week in rates.

The corporation own four trading undertakings: transport, water, catering and, uniquely, telephones. On the last there was a small deficit of £17,000 but, of course, the telephone charges in Hull are very reasonable.

The transport undertaking also failed to balance income and expenditure to the tune of £46,000 but the general difficulties of transport undertakings are well known. There is evidence of past financial prudence here: loan debt being only £186,000 against capital outlay of £1,158,000.

The water undertaking, which supplies an area of 312 square miles, produced a surplus of £43,000. It has spent over £4 m. on capital works.

The city has a population of 301,000 for whose benefit capital works of close on £50 m. have been carried out, two-fifths of the total being for housing. Total loan debt is £32 m., a large figure the service of which costs close on £3 m. a year, equal to 15 *per cent.* of all corporation expenditure. The successful management of the finance for such large capital expenditure calls for—and gets throughout the country—the skill of treasurers such as Mr. Pollard.

KENT COUNTY CONSTABULARY: CHIEF CONSTABLE'S REPORT FOR 1958

Although during 1958 the force had a net increase in male strength of 36 (compared with 11 in 1957 and 22 in 1956) and of two women police, the final figure of actual strength, 1,611, was 175 short of the authorized establishment of 1,786.

The figures for indictable crimes, non-indictable offences and traffic accidents all show considerable increases over those for 1957 so that the increase in strength appears insufficient to balance the increase in work.

Recorded crimes numbered 13,898 (1957 figure 12,451). Adults dealt with totalled 2,118 and juveniles 1,042; juveniles were known to have been responsible for 2,528 of the detected crimes. House-breaking increased from 715 to 905, shop-breaking from 1,155 to 1,338 and attempts to break into houses from 145 to 184. Burglary also increased, from 166 to 214.

Persons dealt with for non-indictable offences jumped from 12,189 in 1957 to 15,929 in 1958, and 13,929 of these were accused of motoring offences. There were 2,714 allegations of speed limit offences, 295 of reckless or dangerous driving, 1,333 of careless driving and 78 of driving or being in charge of a motor vehicle when under the influence of drink.

Road accidents are dealt with in a separate report and in great detail. The total number was 15,322, an increase of 2,210 (16·8 *per cent.*) on the 1957 total; 159 people were killed and 2,042 were seriously and 5,884 slightly injured. It is stated that the object of the detailed analysis of the figures is to draw the attention of everyone to the serious position. The police took an active part in special road safety campaigns and, as is now usual everywhere, gave instruction to school children and to others. Visits were paid by 106 parties, from various organizations, to the headquarters of the traffic division and in this way nearly 1,400 people gained knowledge of accidents and their causes. Other police duties included consideration of numerous projects for the improvement of traffic conditions, 775 of which were actually completed during the year.

Prosecutions for drunkenness in the county numbered 377 in 1958, a large increase on the 1957 total of 240 but not a large total when one considers that the population of the Kent county police district is 1,158,700.

THE CARNEGIE UNITED KINGDOM TRUST

The annual report of the Carnegie United Kingdom Trust deals mainly with the grants which have been made in support of the arts and education. But the interests of the Trust are very wide and cover many fields. For instance it was stated in the previous year's report that £5,000 had been set aside for distribution over five years to rural community councils for the development of practical efforts to bring advice services within the reach of country dwellers and people who live in small towns, many of whom have no less need of such services than those who live in large towns and have access to citizens' advice bureaux. Ten councils were given support for this purpose in 1958. Amongst grants made in the field of education is one to the Birmingham Royal Institution for the Blind towards the cost of providing technical training for blind adolescents of a kind that is supported from public funds for sighted children only. Help of a different kind in connexion with the welfare of the blind is a grant to the college of teachers of the blind towards the expense of publishing a handbook for home teachers.

The payments made by the Trust during the year included the annual grants to the National Council of Social Service, and the Council of Social Service for Wales and Monmouth. The trustees commend in their report the valuable work for the benefit of the community undertaken by these bodies in promoting co-operation between the various voluntary organizations.

ANNUAL REPORT OF THE CHIEF INSPECTOR OF FACTORIES

Factory accidents reported in 1958 fell by four *per cent.* over the previous year to their lowest level for 23 years according to the annual report of the chief inspector of factories. But fatal accidents rose slightly from 651 to 665. He makes special reference to the developments in the training of young persons in accident prevention as part of their technical education, and expresses a hope that these developments will continue. During 1958 a number of developments also took place in organizations set up in industry and outside to consider industrial safety and health. Some examples are quoted in the report. Particular reference is made to discussions with H.M. inspectors of schools on ways and means of introducing safety topics in the school and technical college curricula. Safety training has been introduced into the courses at some of them. The most outstanding example of progress in this connexion was a one-day conference on safety training held at Blackpool in June which led to the formation of an industrial hazards sub-committee for the North-West Region. The chief inspector is awaiting with interest the results of a scheme for a series of lectures on safety to be given to teachers of technical subjects, which that sub-committee formulated.

Turning to fire prevention, the report deals in detail with the causes of fires in factories of which there are about 7,000 outbreaks every year. In many of the smaller factories there is no fire fighting equipment at all but generally the standard of equipment has improved considerably in recent years.

CITY OF CARDIFF

At the beginning of his report, the chief constable writes that matters of primary concern are the deficiency in police strength, the provision and improvement of police stations and the increase in the number of indictable offences.

The force lost 13 in actual strength during the year so that there were, on December 31, 41 vacancies to be filled to bring the strength up to the authorized establishment of 459. An unusual feature in Cardiff is the shortage of women police, the establishment being 20 and the strength only eight. Only eight applications were received from women and none of them proved satisfactory.

The increase in the number of indictable offences, from 4,341 to 5,754 is so large that it must give rise to considerable concern. It is attributable mainly to more cases of theft and breaking offences. There is no doubt that the public are partly to blame by their failure to take all reasonable steps to protect their own property. For example, thefts from unattended motor cars rose from 467 to 757. The chief constable reports that repeated requests to car owners to lock cars before leaving them "have, unfortunately, not met with co-operation by members of the public."

The parking problem is an urgent one here as in most other places. Many motorists are reported to take advantage of the

fact that police man power is inadequate to enable them properly to enforce the no-waiting and limited waiting restrictions, and the dislike of motorists for paying any fee to park their cars is also the subject of comment. The only answer to this attitude is for the courts to make "free" parking so expensive, in suitable cases, that the motorist will find that it is cheaper to pay a reasonable fee in car parks which are provided.

In his report to the licensing committee the chief constable remarks on the increase in the number of charges of drunkenness (515 in 1958; 467 in 1957) and states that no satisfactory explanation has been found to account for this increase. It may be that the fact that 110 of those charged were discharged absolutely does not help in persuading offenders not to repeat their offences.

CONFERENCES, MEETINGS, ETC.

THE AMC CONFERENCE 1959

Meeting at Torquay in the middle of an acute water shortage —and it is feared that most of the delegates did not join the borough water engineer in his prayers for rain—the Association of Municipal Corporations at their Annual Conference this year did not concern themselves with water reorganization, but with three other matters of first importance, namely, car parking, public libraries and press and public relations.

Before the conference itself commenced, the afternoon of the first day was spent on the Annual Meeting, which was attended by the Rt. Hon. the Lord Mayor of London in State. After the preliminaries, the meeting soon got down to domestic business and considered a report from the General Purposes Committee showing that the finances of the Association were badly "in the red" and recommending an increase in subscriptions of 100 *per cent.* Naturally enough, this brought forth cries of protest from the rank and file. Alderman Cowan of Ilford called attention to the fact that the committee's proposals were budgeting for substantial reserves, such as (he contended) were not necessary for an association of this nature, and he proposed that a levy should be raised forthwith, adequate to pay off the immediate deficiency, but that subscriptions should remain unaltered until the whole matter had been investigated. This proposal was heavily defeated, but after a proposal had been put forward by a representative from Penzance to the effect that the whole basis of assessment of the subscriptions should be scrapped in favour of a fraction of the product of 1*d.* rate by each member (therefore securing, said the speaker "justice rather than rough justice"), the General Purposes Committee's report was carried by a majority of 153 to 91—not as overwhelming a majority as that committee's recommendations customarily secure. The Penzance proposal had in the meantime been withdrawn, on the assurance of Sir Francis Hill (chairman of the committee) that it would be examined. It is to be hoped that this proposal will ultimately be found to be practicable, as it seems only equitable that in an association such as this, member corporations should contribute towards expenses according to their financial ability.

On the Wednesday, the conference got well under way with a most interesting paper by Sir Herbert Manzoni (city engineer and surveyor of Birmingham) supplemented by a colour film of cities in the U.S.A., on car parking in urban areas—with particular reference of course to the great cities. Sir Herbert pointed out how important was the problem and how it was growing; at present in this country there is one vehicle to every seven to eight persons, in ten years' time it is estimated that there will be at least one car to every family. Many part-solutions to the problem were considered in Sir Herbert's paper—the permission of parking in residential streets—one-way traffic—off-street car parking in multi-storey garages (as in many cities of the U.S.A.)—exclusion of vehicles from the central area of a large city with the provision of a fast transit system by public vehicles (which can never be made to pay, said Sir Herbert). The general theme of Sir Herbert's paper and address was that the problem of the motor car is here to stay, we should not deal with parking simply by regulation, but we must welcome traffic in our town centres and make adequate provision for it. The speaker also expressed the view that if the parking provision is really adequate free parking can be absolutely prohibited and the provision of capital schemes then becomes more nearly economic. This paper brought many speakers to their feet, among them a representative from St. Marylebone, who claimed that the three months experience his council had had of parking meters had proved them to be a complete success. Once the meters were installed and in use, his council had heard very little more of the vociferous objections made at the inquiry prior to the introduction of the scheme. Coventry's representative referred to the parking spaces that had been provided on the tops of buildings in his city's centre, but councillor Mrs. Neate of Winchester queried the advisability of making the centre of a historic or beautiful city one vast car park. The town clerk of Manchester highlighted a few legal difficulties, suggesting in particular that s. 68 of the Public Health Act, 1925, had been made redundant by the planning legislation and should therefore be repealed.

The next paper was given by the city librarian of Manchester (Mr. D. I. Colley), in which he outlined the work of the public library of today in the community. He put in a plea for a proper staffing policy in local government libraries and emphasized the true function of the modern library to store facts and ideas and to promote their dissemination by every available means, including books, gramophone records and music, pictures and the acting of plays. The Roberts Committee Report, with its concentration on money spent on books as the test of efficiency, came in for a great deal of well deserved criticism both from Mr. Colley and from several speakers from the floor.

The third day was concerned with public relations in the morning and press relations in the afternoon. Mr. McLoughlin's paper "Tell the People," was not basically controversial, although he contended that not enough local authorities had a basic public relations policy. Special events and publicity "stunts" were all very well in their way, but true public relations in local government meant a sustained effort and the larger the local authority, the greater was the need for a sound public relations policy. As examples of what could be done, Mr. McLoughlin suggested that local authorities should invite organizations to attend council meetings, attractive notices should be exhibited, and there should be friendly relations with the local press. Civics should be taught in schools as part of the standard curriculum and visitors to the town hall and callers on the telephone should be made to feel welcome. A representative from Cheltenham, in the course of a general discussion on the paper, suggested that the conduct of affairs by some local authorities was partly to blame for any bad public relations and Lord Addington (Buckingham) pointed out that publicity was the concern of every councillor, every member of a local authority was a spokesman for the public, and therefore it was his business to find out what the public wanted and what they were doing.

The final afternoon session, on "Local Authorities and the Press," was perhaps the highlight of the whole conference and it was a pity so many delegates had had to leave early to catch homeward trains. The discussion was started by Mr. L. Crisp, a past-president of the Guild of British Newspaper Editors and the editor of a number of local papers circulating in the Home Counties. He did not mince his criticism of the way which far too many local authorities (in his opinion) failed to give proper facilities to local press representatives and conducted much of their business behind closed doors. Local authorities will not "spill the beans"; too many treat the public as an enemy; the electorate should be fully informed; such were his comments and he then proceeded to give details of particular local authorities who had offended, even reading correspondence on the subject that had passed between him (Mr. Crisp) and the clerk of one local authority.

In his reply to Mr. Crisp's remarks, Councillor M. P. Pariser, of Manchester, was just as forthright. He contended that most local authorities had no desire whatever to blanket their proceedings, and they welcomed the press. The Local Authorities (Admission of the Press to Meetings) Act, 1908 gave certain rights to the press and in return the press should recognize that they had certain moral duties to local authorities to report proceedings accurately and adequately. Instead of this Mr. Pariser accused many local newspapers of inaccurate reporting and distortion—often untrained reporters were sent to local authority meetings and it was always the scandalous, the frivolous and the personal items that were given the best coverage. The rights of the press to attend council meetings could not be extended to all committees (as had been urged by Mr. Crisp), as privacy (as distinct from secrecy) was an essential element of much of the work done in committee or sub-committee. By way

of confirmation of his views Mr. Pariser asked those delegates present (and a number had left by this time) to stand if they agreed that there was substance in his complaints of the conduct of the press. About two-thirds of those present, so far as could be judged from the back of the hall, gave their vote for Mr. Pariser in this somewhat unorthodox fashion.

In the discussion that followed, most of the speakers—as perhaps might have been expected—sided with Mr. Pariser and against the press. As the representative from Leeds said, how could officers advise, how could members of the same political party disagree with one another, or how could members of opposite political parties agree, if proceedings in committee were always conducted in the presence of the press? A few speakers from the smaller towns expressed themselves as being very satisfied with their local press, but this was perhaps not surprising as it is in the small towns where there is a keen sense of civic consciousness that the friendliest relations exist between the local authority and the press.

If local representatives and local editors really feel as badly about one another as seemed to be the case from the discussion at Torquay, perhaps Mr. Pariser was right in suggesting that a serious attempt should be made to get representatives of local authorities and of the press to meet and discuss a solution. All local authorities should not be condemned by the press because of a few recent unfortunate incidents, nor should all local editors be criticized because a few of their number may prove to be irresponsible on occasion.

This year's A.M.C. conference was thus very well worth while—apart altogether from the many friendships renewed or made between officers and members of the several authorities. Nevertheless it is suggested that it might have been more valuable if an opportunity had been given—as is done at conferences of the other local authority associations—for resolutions to be passed expressing the opinions of members on the several topics discussed. Perhaps the present is scarcely the opportune time to express views on such matters in terms of formal resolutions to be passed to Her Majesty's Government (or Her Majesty's Opposition ?), but this might well be considered for another year when there is no General Election pending.

WEST RIDING URBAN DISTRICT COUNCILS ASSOCIATION

Some interesting papers were submitted to the annual conference of the West Riding of Yorkshire Urban District Councils Association held at Scarborough on September 10 and 11. Mr. F. Potter, clerk of the Wombwell urban district council, dealt with the expense which falls upon local authorities in connexion with demolition orders and clearance orders. He pointed out that where old houses are improved and modernized by means of grants the government accepts responsibility for 75 *per cent.* and asked why should there not be some similar financial aid in the case of slum clearance compensation. Public street lighting was discussed in a paper by Mr. F. Bailey, clerk of the Normanton council, who showed that for approximately the same relative cost as before the war the standard of modern lighting is almost three times as good, and the value, in terms of rate expenditure, continues to increase. He said the effect of street lighting on road safety was a major reason for carrying out improvements. Although there is less traffic on the roads at night almost half of all adult road deaths and 60 *per cent.* of all pedestrian deaths occur after dark. He suggested that this service should be included in the overall national highways programme with a grant as in the case of classified road maintenance and improvements.

In a paper on private street works by Mr. B. E. Townsend, LL.B., clerk of the Ilkely council, reference was made to the decision of the Minister of Housing and Local Government to arrange for a broad survey of the working of the arrangements for making up private streets. On the liability of frontagers Mr. Townsend suggested that much greater use should be made of the power provided in s. 10 of the Private Street Works Act, 1892, to apportion the expenses having regard to the greater or lesser degree of benefit derived from the street works. He thought that in this way local authorities, without cost to themselves, could avoid hardship to some people in carrying out such works. The anomolies in the statutory provisions for the payment of the expenses of members of local authorities were raised in a paper by Mr. C. Bishop, clerk of the Dearne council. He suggested that the review of local government boundaries under the Local Government Act will make it reasonable that members of all types of local authorities should be reimbursed travelling expenses, where necessarily incurred within as well as outside the area.

WORLD MENTAL HEALTH YEAR

Nineteen hundred and sixty has been designated as World Mental Health Year by the World Federation of Mental Health which has 111 member associations in 43 countries. The aims of the federation are three: (i) To promote among all peoples and nations the highest possible standard of mental health, in its broadest biological, medical, educational and social aspects; (ii) to foster the ability to live harmoniously in a changing environment and to encourage research in the field of mental health; and (iii) to promote co-operation among scientific and professional groups which contribute to the advancement of mental health, and to encourage the improvement of standards of training in the relevant professions. The federation has offices in London and New York. World Mental Health Year is being planned with the objective of obtaining a great advance of treatment and the establishment of better health throughout the world. In Great Britain as in other member countries special meetings and conferences are being arranged.

REVIEWS

Moriarty's Police Law. By C. C. H. Moriarty and W. J. Williams. Butterworth & Co (Publishers) Ltd. Price 15s. 6d. net, postage 1s. 6d. extra.

The many readers of this book will all regret that Mr. Moriarty died before this 15th edition went to press. Mr. Williams is chief constable of the Gwynedd Constabulary. The demand for the book can be estimated from the fact that the 14th edition appeared only in February, 1957, with second and third impressions in November, 1957, and August, 1958, respectively.

A glance at the table of references to statutes at the end of the book shows that no fewer than 23 statutes passed since the 14th edition was prepared have had to be noted and dealt with in the text, and police officers and others who rightly rely on "Moriarty" should be grateful that the book is kept up-to-date in this way. It is, of course, an endless task. To quote only one example, we now have the Street Offences Act, 1959, with its new provisions about soliciting and other matters which will have to be dealt with in the next edition.

"Moriarty" is so well known to our readers that a detailed review of the new edition is unnecessary. The arrangement is the same as before. Where we have checked the text so far as it is concerned with statutes which have come into force since the last edition was prepared we have found no faults and we can confidently recommend this book as a text-book for police officers and for any others of our readers who want to be able to refer quickly and easily to the law considered from the policeman's point of view.

Divorce Forms and Precedents. By D. R. Le B. Holloway, LL.B. (Hons.) of the Principal Probate Registry and Divorce Registry. London: The Solicitors' Law Stationery Society Ltd. Price £2 5s.

The author is in a position to know what is required by practitioners in the Divorce Court, and he is well qualified to supply it. The book is divided into sections, and each section is prefaced by a short introduction explaining the purpose of the forms and the circumstances in which they are used. The forms themselves are mostly based on the Matrimonial Causes Rules, 1957, as well as the Rules of the Supreme Court where applicable. The relevant statutory rule is indicated at the beginning of each section, or subsection. Recent statutes dealt with include the Matrimonial Proceedings (Children) Act, 1958, Maintenance Orders Act, 1958, Maintenance Agreements Act, 1957, Matrimonial Causes (Property and Maintenance) Act, 1958, and the Divorce (Insanity and Desertion) Act, 1958. The book is therefore complete and up to date, and we have no hesitation in recommending it.

SHORTER NOTICES

Sleaford U.D.C. Year Book, 1959–60

We make reference to this little booklet since there are admirable features in it: in addition to the more usual features to be found in practically every such year book are details relating too house purchase and improvement grants, and the council's charges in respect of water supply, tennis courts, etc., which would appear to make it suitable for general distribution.

A PLACE IN THE SUN

As this glorious summer draws towards its close, the most casual observer must remark how strong a hold the sun-cult has upon our misty, rain-drenched land. On every beach around its coasts; at every inland resort; throughout the countryside, on common, heath and field; and even in our great, sprawling cities, private gardens and public parks show sunbathers lying supine or prone, exposing large areas of their bodies to those life-giving rays. Parts of the human frame which have not seen the light of day (except in the privacy of a heated bathroom) for many a long year have, in the past few months, enjoyed the comforting warmth of the sun and the soft caress of the breeze upon their surface. Limbs sprawl in all directions, parboiled or done to a turn; healthily bronzed or angrily red. For far-shooting Apollo, as Homer calls him, has two aspects—the one beneficent, revitalizing and gracious; the other fierce, blistering and cruel. He is as capricious as the Old Testament Jehovah. He is the father of Aesculapius, and patron of the healing art; but his arrows punish evil-doers with plague and sudden death. He is the god of light, and the protector of poets, musicians and seers; but he is also the author of that dark deed, the flaying alive of the satyr Marsyas, who had presumed to compete with him in musical skill.

It was Apollo who, to avenge an insult to his priest, sent upon the Achaean host before Troy that baneful plague which the opening lines of the *Iliad* describe, "when, day and night, innumerable funeral pyres consumed the dead." Seldom in our northern climate is his anger so fierce, his stroke so grievous as that; yet even we should be prudent to temper his burning rays with unguents and soothing lotions, to dull his dazzling glare with dark-tinted shades. Skins pale and unused to his rare ministrations may find him less genial than they remembered; eyes unaccustomed to look upon his majesty are liable perforce to droop before his unveiled glory. Sore limbs and aching heads are the least of the evils that temerity may produce.

Warnings, however, are likely to fall upon deaf ears. Thirteen centuries before Christ, Akhnaten, Pharaoh of the 18th Dynasty, proclaimed the unity of the one and only deity, Aten, and symbolized him by the Sun-Disk, each of whose rays terminated in a protective human hand. From that day to this, in different ages and in varying climes, the life-giving Sun has been longed for, worshipped, propitiated and praised, from Mexico to Japan, from the equable warmth of Italy and Greece to the inhospitable cold and darkness of northern Norway. And the rarer his appearances, the greater the inducement for all to put their clothes aside and bathe their bodies in that radiant effulgence.

The Times of August 1 celebrated the high point of the holiday season with a two-column survey and retrospect of some well known seaside resorts. Sun-worship is of immemorial antiquity; but only for the past 200 years has the sea been regarded as something to enjoy. Dr. Russell, with his sea-water cure, put Brighthelmstone on the way to becoming the Brighton of today. The Prince Regent (afterwards George IV) made it fashionable; his father preferred Weymouth and Sidmouth. Queen Victoria had stayed as a child at Ramsgate, Broadstairs and St. Leonards; she visited Brighton after her accession, once; but was not amused either by its associations with the escapades of her eldest uncle or by the bizarre shape of the Royal Pavilion, which she sold to the corporation. Osborne was her favourite refuge from the cares of state.

Miss Austen discusses the relative merits of Southend and Cromer in *Emma*, and Lyme Regis is made memorable in the pages of *Persuasion*. Sun and sea, since then, have attracted ever-increasing thousands. But how to confine healthy exposure within the limitations of decency? A print of 1735 shows a "bathing-machine" on Scarborough beach; but the "modesty-hood"—a canvas screen let down over the exit "to preserve the modesty of the female sex"—is said to have been invented, much later, by a Margate Quaker. Until about 1800 men and women alike bathed entirely naked; a Rowlandson cartoon of that year, entitled *Summer Amusements, or a Peep at the Mermaids*, shows "a group of naughty old gentlemen peering through telescopes at ladies gambolling naked in the sea, while one wife belabours her husband with an umbrella." Conversely, a cartoon from *Paul Pry*, as late as 1858, entitled *London on the Beach*, shows a young woman examining, through a telescope obligingly held by her *beau*, several naked men wading in the sea. (The joke, though nearly 60 years old by that time, had apparently preserved its flavour.)

The late 18th century was no Age of Innocence, but it is amusing to reflect on the vicissitudes which the undress uniform of the beach has undergone in the past 150 years. Despite the common law decisions which make it an indictable offence "publicly to exhibit the naked person" (*R.* v. *Sidney* (1663), 1 Sid. 168) or "to bathe in a state of nudity in a place near to which persons frequently pass" (*R.* v. *Crunden* (1809), 2 Camp. 89), the researches of Westermarck, Frazer and other famous anthropologists have shown that clothing of most kinds is designed to accentuate rather than to conceal the differences between the sexes; that partial concealment is a greater stimulus than complete revelation; and that the cult of nudity, partial or complete, has little to do with sexual morality but a good deal with passing conventions of time and place. (Consider, for example, the mid-Victorian "bustles," padded abdomens, high bosoms, low-cut "neck" lines and bare arms and shoulders, contemporaneous with ankle-length skirts.)

Sir Kenneth Clark has drawn an ingenious contrast between "the naked" and "the nude." The latter is "an art-form invented by the Greeks in the fifth century B.C.", and expresses their striving to represent the ideal human body in marble or bronze. Their young men (and, in Sparta, the girls also) exercised in the gymnasium and on the running-track entirely nude; and if their bodies had anything like the perfection of the Ephebe of Kritios, or the Esquiline Aphrodite, they had good cause to exult in their beauty and strength. But nakedness, in ordinary usage, connotes something of the embarrassment of being without clothes—an embarrassment which may afflict the onlooker as deeply as the object of his view. Others besides Sir Kenneth Clark and Gustave Flaubert (whom he quotes on the subject) have ridiculed "the illusion that the naked body is, in itself, an object on which the eye dwells with pleasure." The shapelessness which may be seen among the models at the art school, and the ugliness which frequently flaunts itself on the beach, provide ample evidence to the contrary. They do not excite but repel the appetite. If less attention were paid to the fluctuating fashions of "decency," and more to the eternal verities of aesthetics, the world would be a more splendid and a richer storehouse of beauty, and a place in the sun a privilege reserved (at any rate in public) for plastic perfection and graciousness of form. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1958—*Adoption by widow of her illegitimate child—Effect on affiliation order.*

A, a single woman obtains an affiliation order in respect of her illegitimate child B. She subsequently marries C but before they can jointly adopt B the husband C dies. A now wishes to adopt the child herself but is afraid of losing the weekly payment being made under the affiliation order. The order would continue if she can be said to be a "single woman": *see* s. 15 (1) of the Act.

Will you please give your opinion whether it can be said that A although in fact a widow, can be said to be a "single woman" for the purposes of that section having in mind that for the purposes of the Affiliation Proceedings Act, 1957, it has been held that a widow is a single woman.

QUARCO.

Answer.

We are of the opinion, having regard to the use of the words "a single woman" and not the word "unmarried" in s. 15 (1), *ibid*, that the affiliation order would not cease to have effect.

The matter is not, however, completely free from doubt, as the decisions that the term "single woman" is not confined to unmarried women were made in connexion with affiliation proceedings.

2.—Children and Young Persons Act, 1933, s. 55 (2)—*Parent's security for child's good behaviour—Forfeiture of recognizance.*

A boy aged 13 was found guilty of larceny and placed on probation for three years by my juvenile court. His father was ordered to enter into a recognizance for the sum of £5 under s. 55, subs. (ii) of the Children and Young Persons Act, 1933.

The boy has now been found guilty by another juvenile court of a subsequent offence of larceny and with the consent of my magistrates has been punished for both the new offence and the original offence.

It is now desired to forfeit the recognizance of the father, and I assume that s. 96 of the Magistrates' Courts Act, 1952, will apply and that a summons on complaint must be issued directing the father to attend court to show cause why his recognizance should not be forfeited.

Two questions have arisen upon which I shall be glad to have your advice:

(*a*) Should the summons be heard in the juvenile court or the adult court?

(*b*) Who is the proper person to make the complaint with a view to issuing the summons? It has been suggested to me that I should do this and not the police, probation officer or anyone else.

ROCCAL.

Answer.

(*a*) We think that the summons can be heard in either court, but that it is generally expedient for it to be heard in the juvenile court which made the order.

(*b*) It would appear preferable for the complaint to be made by a police officer, as difficulties might arise in the event of the facts being disputed, if the complaint were made by the clerk of the justices.

3.—Husband and Wife—*Husband employed in a British embassy abroad—Application by wife, in this country, for maintenance.*

I have been asked by a married woman to take proceedings against her husband for maintenance. He is a chauffeur with the British Embassy in Oslo. I should appreciate your advice as to whether or not this is possible.

MONIOS.

Answer.

We know no means whereby proceedings can be taken in a magistrates' court against this husband so long as he is living in a foreign country.

4.—Husband and Wife—*Maintenance Orders (Facilities for Enforcement) Act, 1920—Appeal against refusal to confirm an order.*

A provisional maintenance order was made in Australia in favour of a wife on the ground that her husband left her without means of support, and similarly left her two children of the marriage.

On the papers being forwarded by the Secretary of State, a summons was issued against the husband, who resides within this division, to show cause why the order should not be confirmed.

The husband appeared with his solicitor, and resisted confirmation of the order on two of the grounds on which the making of the order might have been opposed, as a result of which the magistrates refused to confirm the provisional order. The Secretary of State was duly informed of this.

Solicitors in Australia, acting for the wife, now inquire as to the possibility of appealing against the refusal to confirm the provisional order, and also as to whether the English counterpart of the Victorian Crown Solicitor would be prepared to represent the wife on such an appeal in view of her lack of means. Section 4 (7) of the Act provides for appeal against confirmation, but apparently not against refusal to confirm.

HIMINO.

Answer.

There seems to be no provision made for an appeal in such circumstances although we think the wife could authorize a solicitor in this country to apply for a case to be stated if the refusal to confirm the order involves a point of law.

5.—Licensing—*Licensed premises closed for re-decoration—Whether consent of licensing justices necessary.*

A case is reported of "an application to close" licensed premises "for one week in order to redecorate the premises." In refusing to grant the application, the chairman of the bench is reported to have said: "There is a licence for drinking facilities and you will have to comply with that order even if those facilities are limited." You will observe that the licence to sell is treated as "an order" to provide "drinking facilities." I submit that it is nothing of the kind, and that any licensee can at any time, if he so chooses, close his premises without having to seek the consent of the licensing justices. If he were to do so, his action might raise difficulties for him when the time came for renewal of his licence, but that would be another story.

OBIDAR.

Answer

We agree.

6.—Licensing—*Licensed premises to close during winter months.*

A local urban district council who are in the process of developing the promenade now own a dance hall situated on the promenade. It is considered that a licence for the sale of intoxicating liquor will considerably enhance the promenade and it is desired to make application for a full licence to the justices. The hall would, however, only be open during the summer months and on odd days during the winter months. The inquirer is not sure how this would be effected in practice and would welcome your views.

O. JAYBEE.

Answer.

The proposal outlined is in no way repugnant to licensing law. When application is made for a justices' on-licence, the licensing justices will direct their minds to the question whether a licence is desirable to satisfy a public need: in such a consideration weighty regard will be had to the question whether the public need requires that licensed business shall be carried on throughout the winter months as well as the summer months.

7.—Magistrates—*Industrial assurance—Jurisdiction to decide dispute.*

A whole life assurance was taken out by a mother for her child aged six years, for one penny per week, in 1924. In 1957 the mother handed the policy to the son, who continued payments for some weeks and then allowed the policy to lapse. By endorsement it was converted to a free paid-up policy for a certain sum (under £25). The son has now applied to the assurance company to receive the surrender value of the policy, which is in the region of £5. The company is willing to pay this out, provided the mother signs the appropriate form. Owing to disputes in the family, the mother now refuses to sign the form.

The son wishes to apply to the magistrates' court to determine a dispute under s. 32 of the Industrial Assurance Act, 1923. This section deals with a dispute between an assurance company and certain persons.

Are you of opinion:

(*a*) that the son is a person entitled to make a complaint under the section; and

(*b*) is there a dispute which the court can determine; and

(*c*) if so—can the court order the assurance company to pay out the surrender value without the consent of the mother?

When the policy was handed to the son by the mother no form of assignment was signed but apparently the insurance agent started a new collecting book for the son to pay into and this was endorsed "Continued from Family Book."

A. J. ANDOR.

Answer.

(*a*) Yes; whether or not he is owner of the policy, he is the person assured.

(*b*) The section is quite general, as regards the disputes to which it applies. The dispute here is, in effect, about the validity of the company's action in 1957, because the substitution of a paid-up policy under s. 25 (or s. 24) can only be upon application by the owner. If the son was not then the owner, the transaction falls to the ground and there is no surrender value yet determined.

(*c*) We think not. The assignment to the son should have been in writing, either separately or by endorsement on the policy. The agent was evidently satisfied that the assignment was genuine, but there is no proof of this.

8.—Open Space—*Private land—Council undertaking maintenance.*

A private golf course and a private sports ground and a private open space for the use of the occupiers of houses abutting on it, which houses are not provided by the council, appear to be open spaces within s. 20 of the Open Spaces Act, 1906. It also appears that, pursuant to s. 9 (*b*), the council can maintain these lands by arrangement with the owners and occupiers and make a charge therefor. Do you agree? In each case not more than 1/20th part is covered with buildings. It is important to the council that such maintenance shall be *intra vires*, because the council's insurance policy in respect of injury to workmen and to third parties and in respect of damage to the property of third parties only operates in cases where the claims result from council activities which are *intra vires*. Personal injury claims in particular can be substantial and, if the work is *ultra vires* and the insurance cover does not apply, presumably the district auditor would feel compelled to surcharge.

CEWAF.

Answer.

If the council undertake management and control of the land, it will have to be made available for enjoyment by the public by reason of s. 10 of the Act. In that case, s. 9 (*b*) authorizes their proposal. We do not however think that the council can undertake care, by virtue of para. (*b*), without management and control. If therefore the query means that the land is to remain private, with the council acting in effect as maintenance contractors, this will be *ultra vires*.

9.—Police—*Powers of arrest—Assault on, or obstruction of, a police officer in the execution of his duty.*

During the past few years the police have had increasing difficulties whilst November 5 celebrations are being held, usually with unruly gangs of teenagers. Offences for which the police can take specific and immediate action are under review and amongst other offences, research has been made particularly into:

1. assaulting a police officer in the execution of his duty, and
2. obstructing a police officer in the execution of his duty.

In seeking the authority giving a police officer power of arrest for assaulting him in the execution of his duty, contrary to s. 12 of the Prevention of Crimes Act, 1871, it would appear that he has common law powers only, no specific authority seems to be quoted.

Stone, 1959 edn., p. 297, quotes "A constable may apprehend any person obstructing him in the execution of his duty if the obstruction is such as to cause or to be likely to cause a breach of the peace . . ."

It would seem that either of these offences would in fact constitute in themselves a breach of the peace. That being the case, should a charge also be preferred of "causing a breach of the peace. etc." to justify the arrest? Police text books state that there are common law powers for arrest in both of these instances.

Your views on this matter, and details of any authorities, would be appreciated.

KORTIN.

Answer.

1. An assault on a police officer in the execution of his duty is clearly a breach of the peace and there is, under common law, power for anyone (including a police officer) to arrest a person who in his presence commits a breach of the peace (*see Halsbury's Laws of England* third edn., vol. 10 at p. 343 and 345).

2. A breach of the peace is committed when *inter alia*, a person obstructs a public officer in the execution of his duty (*ibid.*, p. 343) and *Spilsbury* v. *Micklethwaite* (1808) 1 Taunt. 146 at p. 151 is there cited as the authority for this proposition. On this authority, an obstruction of a police officer in the execution of his duty is a breach of the peace and is, therefore, an offence for which the offender can be arrested without warrant.

There is no need, in either case, to prefer any charge of causing a breach of the peace.

10.—Public Health Act, 1936—*Building—Meaning in byelaws.*

Is an erection consisting of a roof supported by four posts or pillars a building for the purposes of the building byelaws? Can you give me any case where this point has been decided or discussed? The problem in this district is that these structures are being erected, most of them being for the purpose of giving shelter to cars, and the problem is to find out what byelaws (if any) apply.

BESUNA.

Answer.

The word "building" has no precise meaning and must be construed according to its context. *Lumley's* note on s. 61 of the Public Health Act, 1936, points out that the word cannot there be understood in its widest sense, of anything that is built. It may have a wider meaning in the Public Health (Buildings in Streets) Act, 1888, than in ss. 53 or 61 of the Act of 1936. Page 2405 of *Lumley* gives fuller guidance with reference to such cases as there are. In our opinion a roof supported by four posts or pillars is not a building within s. 61, for which notice and plans can be required by byelaws. This is not to say that it might not have to be considered under other enactments.

11.—Private Street Works—*Central section of street built up between parts not yet built up—Adoption.*

The frontage of an unadopted road has been largely developed by the building of houses on individual plots to the owners' requirements. The unadopted road is flanked at both ends by an adopted highway. The frontagers of the central section, which is over 100 *yds.* in length, have served on the council a notice under s. 6 of the New Streets Act, 1951, requesting that action be taken under the Private Street Works Act, 1892, or that their deposits be refunded.

1. Can the council take action under the Private Street Works Act leading to the adoption of a road which will not be directly connected to an adopted road ?

2. Can the council refund deposits as requested unless the road is made up and adopted ?

PORORA.

Answer.

1. Yes, in our opinion. We infer that the unadopted roads are highways.

2. No. There is no power in the New Streets Acts, 1951 and 1957, to make such a refund.

12.—Private Street Works—*Construction of cul-de-sac off private street.*

A *cul-de-sac* is constructed off a private street on undeveloped land, between the date of the approval of the provisional apportionment and the date of final apportionment. In the provisional apportionment the private street works expenses in respect of the frontage of the undeveloped land are charged against the owner. Section 12 of the Private Street Works Act, 1892, provides that private street works expenses in the final apportionment shall be divided in the same proportions as in the provisional apportionment. In the final apportionment should the private street works expenses in respect of the mouth of the *cul-de-sac* be charged against the council as land *extra commercium* ?

PAFFIL.

Answer.

No, in our opinion. The owners may change between the apportionments, but premises cannot in our opinion cease to have owners within the meaning of the Act during that period; there is no ground of objection in s. 12 of the Act, from their ceasing to have an owner. Moreover, the *cul-de-sac* may not be a highway, *i.e.*, even if there has been dedication it would be difficult to show acceptance by the public.

13.—Real Property—*Roadside land—Access for vehicles.*

A is the occupier of a licensed premises adjacent to a class I road in an urban district. There is a piece of land adjoining the premises and alongside the highway. There already exists a road access at this point and use is made of the abutting land for car parking and the unloading of lorries. Please advise whether this user constitutes an offence under any Highway or Road Traffic Acts or under the Town and Country Planning Acts.

C.O.G.D.

Answer.

We gather that this is the existing use and that there is an existing access, so there is no development for which planning permission is required. The other statutes mentioned do not deprive the occupier of roadside premises of his common law right of access for vehicles having business on his premises.

14.—Road Traffic Acts—*Failure to stop after accident—Brief stop with no particulars given—Reporting to police—Policeman passed and no report made.*

The driver of a motor car is involved in a road accident with a stationary motor coach with the result that there are now proceedings pending in respect of driving a motor car without due care and attention and the evidence is such that there is little doubt that a successful prosecution will ensue.

However, a point has arisen as to whether or not the driver should also be prosecuted for failing to stop. The circumstances are as follows.

A coach laden with schoolchildren had stopped on its proper side of the road because one of the children was sick. The bus was displaying proper rear lights although it was twilight at the time. The driver of the motor car concerned overtook a vehicle travelling in the same direction but collided with the rear of the stationary bus immediately afterwards, damaging his own car and causing considerable damage to the bus but without causing any injuries to himself or the passengers of the bus. His vehicle is slewed round in the middle of the road as a result of the accident and the driver gets out when it is observed that he appears to be under the influence of drink. He immediately makes allegations against the driver of the bus, and later leans on his shoulder and then, at his own suggestion, states he is going to pull in front of the bus as the car is blocking the road. He immediately drives off not having given his name and address or any particulars of himself or his vehicle. However, the number of the car is taken and as a result of police action is stopped 40 miles away and approximately 1¼ hours after the accident. On being interrogated he admits that he was involved in an accident and gives his correct name but an address of his brother who has not seen him for two years. Further inquiries reveal that he is not living at that address.

The police officers concerned note that the driver has had some drink but is not sufficiently under the influence to arrest and charge and he is allowed to proceed.

On these facts, I recommended that in addition to an offence against s. 12 of the Road Traffic Act, 1930, proceedings should also be instituted against this driver for failing to stop contrary to s. 22 of the Road Traffic Act, 1930 but I was over-ruled on the grounds that he had stopped and long enough for any person to have asked him for them (though I do not think the driver would have given them having regard to his condition).

I maintain that to stop means to stop and give details as required by the Road Traffic Act and his action in leaving the scene without giving those details constituted an offence: otherwise any driver involved in an accident could do exactly as this man did, *i.e.*, stop and then drive off. I would add that the stop was only of a very short duration, possibly two or three minutes at the most.

During the course of this discussion, the question of failing to report was also raised (this man passed one police officer in a village six miles further on his journey and had plenty of opportunity to report the accident and was only obliged to give details when stopped by the police of another county). In the course of his conversation with this officer, he is alleged to have said "I don't call that a b— accident, I shall not even make a claim, this is a lot of f---g fuss" and there is an implication here, I consider, that he never did intend to report the accident.

I raised the question of a stated case in which a man had been involved in a road accident (but where there was a personal injury) in which a man knocked down a schoolgirl, stopped at the scene of the accident and then said he would report the accident. He did so the next morning at his local police station. He was prosecuted for failing to report the accident. The prosecution contended that he had passed a police station close to the scene of the accident and that he had not complied with the requirements of the Act which said "shall report the accident *as soon as possible* and in any case within 48 hours." Unfortunately I could not remember the parties in this case. It was, I think in 1937 but cannot be more explicit, I regret.

I shall be glad of your observations in this case which is based on actual facts.

IMENO.

Answer.

In our view s. 21 (1) is not complied with, unless a driver not only stops but also gives a proper opportunity for the necessary particulars to be asked for and obtained. On the facts given in the question, there seems to be a *prima facie* case of failing to stop as required by the subsection.

So far as reporting to the police is concerned, the prosecution would have to satisfy the court beyond reasonable doubt that there had been a failure to report at a police station or to a police constable, when it had been reasonably practicable to report. If the court were so satisfied, there would have been a breach of s. 21 (2), even though the maximum period of 24 hours had not passed.

15.—Town and Country Planning Act, 1947—*Enforcement notices—Continued use of land—Limitation.*

Does the six months limitation relating generally to summary proceedings apply to enforcement notices served under s. 23 of the Town and Country Planning Act, 1947, so as to preclude proceedings for non-compliance with a notice, after the expiry of the period specified in the notice, within which an authorized use is to be discontinued or any works of reinstatement, etc., therein mentioned carried out.

C.C.C.

Answer.

Where a valid notice has been served under s. 23, the offence created by s. 24 (3) is to "use, cause, or permit." Summary proceedings can therefore be taken within six months of any day on which there has been use, even though this is more than six months after the period specified in the notice. For fuller discussion, *see* 115 J.P.N. 270.